



Powers of Attorney and such...

By

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Introduction

- I am **NOT** an attorney and this presentation should not be taken as legal advice
- This presentation is merely guidance on the various types of POAs that exist and are often seen by the West Virginia Public Employees Insurance Agency
- You are encouraged to speak to an Attorney or people you trust when doing any life planning.

What is a Power of Attorney?

- A **Power of Attorney** (POA) or “letter of attorney” is a written authorization to represent or act on another’s behalf in private affairs, business, or some other legal matter, sometimes against the wishes of the other.
- The person authorizing the other to act is the “**Principal**”, “**Grantor**”, or “**Donor**” of the power
- The only one(s) authorized to act is/are the “**Agent(s)**”, or, in some common law jurisdictions, the, “**Attorney-In-Fact**” – (attorney for short)

In West Virginia...

- §39B of the West Virginia Code – the Uniform Power of Attorney Act
- ARTICLE 1 – General Provisions. §39-B-1-101, Short title
- ARTICLE 2 – Authority. §39B-2-101 – Authority that requires specific grant; grant of general authority
- §39B-3-101. Statutory form Power of Attorney
- §39B-3-102. Agents Certification

Types of POAs...

- **General POAs**
- **Durable POAs**
- **“Springing” POAs**
- **Limited POAs** – typically are granted related to performing one (1) task, e.g. buying a home, retirement planning, etc.
- **Medical POAs**
 - Typically only pertain to “healthcare and treatment”
 - **They do not typically allow the “Agent” to handle financial matters, including insurances**

Powers of Attorney...

- Must be signed by the Principal when they have full power to give informed consent – aren't valid if the Principal is impaired and/or incompetent at signing, e.g. has dementia, Alzheimer's, etc.
- Expire upon the death of the Principal
- Not a substitute for a "Will", "Probate", "Legal Guardianship", etc.

A Principal may...

- Appoint more than one (1) “Agent”
 - The “Agents” may have the power to act independently of each other or the POA may require them to be in agreement (act “in concert”)
 - If the document says, “John and Jane” but doesn’t have, “John and/or Jane” or similar language, the Agents **MUST** act “in concert” – together and not separate.
- Appoint “successor” Agent(s) who can act if the Primary Agent is “incapable, unwilling, or unable” to serve
- Limit and/or restrict the power(s) of the “Agent”
- Revoke the powers previously granted

Typically...

- Powers not directly expressed are not given to the “Agent” – they are not “implied”
- Certain powers, such as the ability to change beneficiaries, must be expressed are not considered to be “implied”
- “Agents”, unless the power is specifically granted in the POA, cannot delegate their authority to others, such as a spouse or child
- Agent **MUST** act in the best interest(s) of the Principal and cannot do things to benefit themselves

Once a POA is signed...

- It cannot be changed or otherwise added to, altered, amended, modified, edited, and/or adulterated – not even for “clarification” purposes – It is what is at signing
- Entities, such as PEIA, may only act on “true and correct” copies of the original – a “photograph” nor a “picture” [cell phone, camera, etc.] is **NOT** a “true and correct” copy.

If there is no POA...

- **...and the member cannot handle their own affairs:**
 - The person may be declared a “Protected Person” through a legal process
 - A “Guardian” and/or a “Conservator” must be appointed to handle the affairs of the “Protected Person”
 - If appointed, a “Healthcare Surrogate” can only make decisions related to healthcare and/or treatment – they cannot handle insurances

Issues that PEIA encounters...

- Multiple “**Agents**” who don’t agree and go back-and-forth changing things, e.g. addresses, contact information, Plan(s), beneficiaries, etc.
- Conflicting POAs
- Agents on a Medical POA trying to manage the insurance(s) – typically not allowed
- POAs signed after a member has been determined to be incapacitated, e.g. diagnosed with dementia, Alzheimer’s, etc.
- **Falsified POAs – can be a crime...**

In West Virginia...

- **WEST VIRGINIA CODE - §61-2-29b.** Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.
 - Makes it a crime to exploit the financial assets of an elderly person
 - Sadly, it is becoming more and more prevalent

Questions?-?-?

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